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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 156

Introduced by Assembly Member Murray
(Coauthors: Assembly Members Lempert, Scott, and
Wayne)
(Coauthor: Senator Solis)

January 23, 1997

An act to amend Sections 1785.14, 1785.16, 1785.30, 1785.31, and 1785.33 of, ~~and to add Section 1785.8 to,~~ the Civil Code, and to add Section 530.5 to the Penal Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 156, as amended, Murray. Personal information: credit reporting agencies.

(1) The existing Consumer Credit Reporting Agencies Act provides for the regulation of consumer credit reporting agencies that regularly engage in whole or in part in the business of assembling or evaluating consumer credit

information or other information on consumers for the purpose of furnishing consumer credit reports to 3rd parties. Existing law prohibits a consumer credit reporting agency from furnishing a consumer credit report to any person unless it has reasonable grounds to believe that the consumer credit report will be used by this person for expressly provided purposes.

This bill would additionally require a prospective user of the consumer credit report who is a retail seller to provide the consumer credit agency with at least 3 categories of information regarding the consumer that matches, as specified, information within a file assembled by the consumer credit reporting agency and to certify, in specified instances, that it requires its employees and agents to inspect a photo identification of a consumer for credit.

(2) The act specifies procedures for the consumer credit reporting agency to follow in case a consumer disputes the completeness or accuracy of any item of information contained in his or her file.

This bill would revise these procedures to, among other things, require the consumer credit reporting agency to promptly and permanently block the reporting of disputed information and so notify the furnisher of the information if the consumer submits a valid police report concerning the crime described in (4), as specified. However, the bill would specify certain conditions under which the information may be unblocked.

(3) The Consumer Credit Reporting Agencies Act prescribes civil remedies for the violation of the act and provides that the prevailing parties in any action commenced to obtain these remedies shall be entitled to recover court costs and reasonable attorney's fees. The act also prescribes a ~~2-year~~ 2-year statute of limitations from the date liability arises under the act.

This bill would provide that the prevailing plaintiff shall be entitled to recover these costs and attorney's fees unless the plaintiff only seeks and obtains injunctive relief to compel compliance with the act. This bill would revise the statute of limitations, as specified.



(4) This bill would also provide that it is a misdemeanor for a person to willfully obtain personal identifying information, as defined, of another person and use another individual's personal identifying information and obtain, or attempt to obtain, credit, goods, or services in the name of the other person without the consent of that person. By creating a new crime, this bill would impose a state-mandated local program.

(5) The bill would provide that it will become operative on July 1, 1998, *except for the provisions described in (4) above, which would become operative on January 1, 1998.*

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1785.8 is added to the Civil Code,~~
2 ~~to read:~~

3 ~~1785.8. The provisions of this title are severable. If any~~
4 ~~provision of this title or its application is held invalid, that~~
5 ~~invalidity shall not affect other provisions or applications~~
6 ~~that can be given effect without the invalid provision or~~
7 ~~application.~~

8 ~~SEC. 1.2.~~

9 *SECTION 1.* Section 1785.14 of the Civil Code is
10 amended to read:

11 1785.14. (a) Every consumer credit reporting
12 agency shall maintain reasonable procedures designed to
13 avoid violations of Section 1785.13 and to limit furnishing
14 of consumer credit reports to the purposes listed under
15 Section 1785.11. These procedures shall require that
16 prospective users of the information identify themselves,
17 certify the purposes for which the information is sought
18 and certify that the information will be used for no other
19 purposes. From the effective date of this act the

1 consumer credit reporting agency shall keep a record of
2 the purposes as stated by the user. Every consumer credit
3 reporting agency shall make a reasonable effort to verify
4 the identity of a new prospective user and the uses
5 certified by the prospective user prior to furnishing the
6 user a consumer report. No consumer credit reporting
7 agency may furnish a consumer credit report to any
8 person unless the consumer credit reporting agency has
9 reasonable grounds for believing that the consumer
10 credit report will be used by the person for the purposes
11 listed in Section 1785.11. A consumer credit reporting
12 agency does not have reasonable grounds for believing
13 that a consumer credit report will be used by the person
14 for the purposes listed in Section 1785.11 unless all of the
15 following requirements are met:

16 (1) If the prospective user is a retail seller, as defined
17 in Section 1802.3, and intends to issue credit to a consumer
18 who appears in person on the basis of an application for
19 credit submitted in person, ~~the user shall provide the~~
20 ~~consumer credit reporting agency with at least three~~
21 ~~categories of identifying information that match, with a~~
22 ~~reasonable degree of certainty, the consumer's~~
23 ~~information within the file maintained by the credit~~
24 ~~reporting agency on a consumer. The categories of the~~
25 ~~consumer credit reporting agency shall, with a~~
26 ~~reasonable degree of certainty, match at least three~~
27 ~~categories of identifying information within the file~~
28 ~~maintained by the consumer credit reporting agency on~~
29 ~~the consumer with the information provided to the~~
30 ~~consumer credit reporting agency by the retail seller. The~~
31 ~~categories of identifying information may include, but~~
32 are not limited to, first and last name, month and date of
33 birth, driver's license number, place of employment,
34 current residence address, previous residence address, or
35 social security number. The categories of information
36 shall not include mother's maiden name.

37 (2) If the prospective user is a retail seller, as defined
38 in Section 1802.3, and intends to issue credit to a consumer
39 who appears in person on the basis of an application for
40 credit submitted in person, the retail seller certifies, in

1 writing, to the consumer credit reporting agency that it
2 instructs its employees and agents to inspect a photo
3 identification of the consumer at the time the application
4 was submitted in person. This paragraph does not apply
5 to an application for credit submitted by mail.

6 (3) If the prospective user intends to extend credit by
7 mail pursuant to a solicitation by mail, the extension of
8 credit shall be mailed to the same address as on the
9 solicitation unless the prospective user verifies any
10 address change by, among other methods, contacting the
11 person to whom the extension of credit will be mailed.

12 (b) Whenever a consumer credit reporting agency
13 prepares a consumer credit report, it shall follow
14 reasonable procedures to assure maximum possible
15 accuracy of the information concerning the individual
16 about whom the report relates. These reasonable
17 procedures shall include, but not be limited to, ~~storage in~~
18 ~~a permanent, individualized file for each consumer of the~~
19 ~~identifying information used by the consumer credit~~
20 ~~reporting agency when it furnishes a credit report on a~~
21 ~~consumer pursuant to paragraph (1) of subdivision (a).~~
22 *permanent retention by the consumer credit reporting*
23 *agency in the consumer's file, or a separately*
24 *individualized file, of that portion of the data in the file*
25 *that is used by the consumer credit reporting agency to*
26 *identify the individual consumer pursuant to paragraph*
27 *(1) of subdivision (a). This permanently retained data*
28 *shall be available for use in either a reinvestigation*
29 *pursuant to subdivision (a) of Section 1785.16, an*
30 *investigation where the consumer has filed a police*
31 *report pursuant to subdivision (k) of Section 1785.16, or*
32 *a restoration of a file involving the consumer. If the*
33 *permanently retained identifying information is retained*
34 *in a consumer's file, it shall be clearly identified in the file*
35 *in order for an individual who reviews the file to easily*
36 *distinguish between the permanently stored identifying*
37 *information and any other identifying information that*
38 *may be a part of the file. This retention requirement shall*
39 *not apply to data that is reported in error, that is obsolete,*
40 *or that is found to be inaccurate through the results of a*

1 reinvestigation initiated by a consumer pursuant to
2 subdivision (a) of Section 1785.16.

3 (c) No consumer credit reporting agency may
4 prohibit any user of any consumer credit report furnished
5 by the consumer credit reporting agency from disclosing
6 the contents of the consumer credit report to the
7 consumer who is the subject of the report if adverse
8 action may be taken by the user based in whole or in part
9 on the consumer credit report. The act of disclosure to the
10 consumer by the user of the contents of a consumer credit
11 report shall not be a basis for liability of the consumer
12 credit reporting agency or the user under Section 1785.31.

13 (d) A consumer credit reporting agency shall provide
14 a written notice to any person who regularly and in the
15 ordinary course of business supplies information to the
16 consumer credit reporting agency concerning any
17 consumer or to whom a consumer credit report is
18 provided by the consumer credit reporting agency. The
19 notice shall specify the person's obligations under this
20 title. Copies of the appropriate code sections shall satisfy
21 the requirement of this subdivision.

22 SEC. 2. Section 1785.16 of the Civil Code is amended
23 to read:

24 1785.16. (a) If the completeness or accuracy of any
25 item of information contained in his or her file is disputed
26 by a consumer, and the dispute is conveyed directly to the
27 consumer credit reporting agency by the consumer or
28 user on behalf of the consumer, the consumer credit
29 reporting agency shall within a reasonable period of time
30 and without charge reinvestigate and record the current
31 status of the disputed information before the end of the
32 30-business-day period beginning on the date the agency
33 receives notice of the dispute from the consumer or user,
34 unless the consumer credit reporting agency has
35 reasonable grounds to believe and determines that the
36 dispute by the consumer is frivolous or irrelevant,
37 including by reason of a failure of the consumer to
38 provide sufficient information, as requested by the
39 consumer credit reporting agency, to resolve the dispute.
40 Unless the consumer credit reporting agency determines



1 that the dispute is frivolous or irrelevant, before the end
2 of the five-business-day period beginning on the date the
3 consumer credit reporting agency receives notice of
4 dispute under this section, the agency shall notify any
5 person who provided information in dispute at the
6 address and in the manner specified by the person. A
7 consumer credit reporting agency may require that
8 disputes by consumers be in writing.

9 (b) In conducting such a reinvestigation the consumer
10 credit reporting agency shall review and consider all
11 relevant information submitted by the consumer with
12 respect to the disputed item of information. If the
13 consumer credit reporting agency determines that the
14 dispute is frivolous or irrelevant, it shall notify the
15 consumer by mail or, if authorized by the consumer for
16 that purpose, by any other means available to the
17 consumer credit reporting agency, within five business
18 days after that determination is made that it is
19 terminating its reinvestigation of the item of information.
20 In this notification, the consumer credit reporting agency
21 shall state the specific reasons why it has determined that
22 the consumer's dispute is frivolous or irrelevant. If the
23 disputed item of information is found to be inaccurate,
24 missing, or can no longer be verified by the evidence
25 submitted, the consumer credit reporting agency shall
26 promptly add, correct, or delete that information from
27 the consumer's file.

28 (c) No information may be reinserted in a consumer's
29 file after having been deleted pursuant to this section
30 unless the person who furnished the information verifies
31 that the information is accurate. If any information
32 deleted from a consumer's file is reinserted in the file, the
33 consumer credit reporting agency shall promptly notify
34 the consumer of the reinsertion in writing or, if
35 authorized by the consumer for that purpose, by any
36 other means available to the consumer credit reporting
37 agency. As part of, or in addition to, this notice the
38 consumer credit reporting agency shall, within five
39 business days of reinserting the information, provide the
40 consumer in writing (1) a statement that the disputed

1 information has been reinserted, (2) a notice that the
2 agency will provide to the consumer, within 15 days
3 following a request, the name, address, and telephone
4 number of any furnisher of information contacted or
5 which contacted the consumer credit reporting agency in
6 connection with the reinsertion, (3) the toll-free
7 telephone number of the consumer credit reporting
8 agency that the consumer can use to obtain this name,
9 address, and telephone number, and (4) a notice that the
10 consumer has the right to a reinvestigation of the
11 information reinserted by the consumer credit reporting
12 agency and to add a statement to his or her file disputing
13 the accuracy or completeness of the information.

14 (d) A consumer credit reporting agency shall provide
15 notice to the consumer of the results of any
16 reinvestigation under this subdivision, within five days of
17 completion of the reinvestigation. The notice shall
18 include (1) a statement that the reinvestigation is
19 completed, (2) a consumer credit report that is based on
20 the consumer's file as that file is revised as a result of the
21 reinvestigation, (3) a description or indication of any
22 changes made in the consumer credit report as a result of
23 those revisions to the consumer's file, (4) a notice that, if
24 requested by the consumer, a description of the
25 procedure used to determine the accuracy and
26 completeness of the information shall be provided to the
27 consumer by the consumer credit reporting agency,
28 including the name, business address, and telephone
29 number of any furnisher of information contacted in
30 connection with that information, (5) a notice that the
31 consumer has the right to add a statement to the
32 consumer's file disputing the accuracy or completeness of
33 the information, and (6) a notice that the consumer has
34 the right to request that the consumer credit reporting
35 agency furnish notifications under subdivision (h). A
36 consumer credit reporting agency shall provide the
37 notice pursuant to this subdivision respecting the
38 procedure used to determine the accuracy and
39 completeness of information, not later than 15 days after
40 receiving a request from the consumer.



1 (e) The presence of information in the consumer's file
2 that contradicts the contention of the consumer shall not,
3 in and of itself, constitute reasonable grounds for
4 believing the dispute is frivolous or irrelevant.

5 (f) If the consumer credit reporting agency
6 determines that the dispute is frivolous or irrelevant, or
7 if the reinvestigation does not resolve the dispute, or if the
8 information is reinserted into the consumer's file
9 pursuant to subdivision (c), the consumer may file a brief
10 statement setting forth the nature of the dispute. The
11 consumer credit reporting agency may limit these
12 statements to not more than 100 words if it provides the
13 consumer with assistance in writing a clear summary of
14 the dispute.

15 (g) Whenever a statement of dispute is filed, the
16 consumer credit reporting agency shall, in any
17 subsequent consumer credit report containing the
18 information in question, clearly note that the information
19 is disputed by the consumer and shall include in the
20 report either the consumer's statement or a clear and
21 accurate summary thereof.

22 (h) Following the deletion of information from a
23 consumer's file pursuant to this section, or following the
24 filing of a statement of dispute pursuant to subdivision (f),
25 the consumer credit reporting agency shall, at the
26 request of the consumer, furnish notification that the
27 item of information has been deleted or that the item of
28 information is disputed. In the case of disputed
29 information, the notification shall include the statement
30 or summary of the dispute filed pursuant to subdivision
31 (f). This notification shall be furnished to any person,
32 specifically designated by the consumer, who has, within
33 two years prior to the deletion or the filing of the dispute,
34 received a consumer credit report concerning the
35 consumer for employment purposes, or who has, within
36 six months of the deletion or the filing of the dispute,
37 received a consumer credit report concerning the
38 consumer for any other purpose, if these consumer credit
39 reports contained the deleted or disputed information.
40 The consumer credit reporting agency shall clearly and

1 conspicuously disclose to the consumer his or her rights
2 to make a request for this notification. The disclosure shall
3 be made at or prior to the time the information is deleted
4 pursuant to this section or the consumer's statement
5 regarding the disputed information is received pursuant
6 to subdivision (f).

7 (i) A consumer credit reporting agency shall maintain
8 reasonable procedures designed to prevent the
9 reappearance in a consumer's file and in consumer credit
10 reports of information that has been deleted pursuant to
11 this section and not reinserted pursuant to subdivision
12 (c).

13 (j) If the consumer's dispute is resolved by deletion of
14 the disputed information within three business days,
15 beginning with the day the consumer credit reporting
16 agency receives notice of the dispute in accordance with
17 subdivision (a), and provided that verification thereof is
18 provided to the consumer in writing within five business
19 days following the deletion, then the consumer credit
20 reporting agency shall be exempt from requirements for
21 further action under subdivisions (d), (f), and (g).

22 (k) If a consumer submits to a credit reporting agency
23 a copy of a valid police report filed pursuant to Section
24 530.5 of the Penal Code, the consumer credit reporting
25 agency shall promptly and permanently block reporting
26 any information that the consumer alleges appears on his
27 or her credit report as a result of a violation of Section
28 530.5 of the Penal Code so that the information cannot be
29 reported. The consumer credit reporting agency shall
30 promptly notify the furnisher of the information that the
31 information has been so blocked. *Furnishers of*
32 *information and consumer credit reporting agencies shall*
33 *ensure that information is unblocked only upon a*
34 *preponderance of the evidence establishing the facts*
35 *required under paragraph (1), (2), or (3). The*
36 *permanently blocked information shall be unblocked*
37 *only if: (1) the furnisher of the information blocked*
38 *demonstrates to the consumer credit reporting agency*
39 *that the information was blocked due to fraud, or (2) the*
40 *consumer agrees that the blocked information, or*

1 portions of the blocked information, were blocked in
 2 error, or (3) ~~the furnisher of the information can~~
 3 ~~demonstrate to the consumer credit reporting agency~~
 4 ~~that the consumer knowingly obtained possession of~~
 5 ~~goods, services, or moneys as a result of the blocked~~
 6 ~~transaction or transactions or the consumer should have~~
 7 ~~known that he or she obtained possession of goods,~~
 8 ~~services, or moneys as a result of the blocked transaction~~
 9 ~~or transactions. If blocked information is unblocked~~
 10 ~~pursuant to this subdivision, the consumer shall be~~
 11 ~~promptly notified in the same manner as consumers are~~
 12 ~~notified of the reinsertion of information pursuant to~~
 13 ~~subdivision (c).~~ The prior presence of the blocked
 14 information in the consumer credit reporting agency's
 15 file on the consumer is not evidence of whether the
 16 consumer knew or should have known that he or she
 17 obtained possession of any goods, services, or moneys. For
 18 the purposes of this subdivision, fraud may be
 19 ~~demonstrated by circumstantial evidence provided by a~~
 20 ~~furnisher to a credit reporting agency.~~ *by circumstantial*
 21 *evidence. In unblocking information pursuant to this*
 22 *subdivision, furnishers and consumer credit reporting*
 23 *agencies shall be subject to their respective requirements*
 24 *pursuant to this title regarding the completeness and*
 25 *accuracy of information.*

26 SEC. 3. Section 1785.30 of the Civil Code is amended
 27 to read:

28 1785.30. Upon notification of the results of a consumer
 29 credit reporting agency's reinvestigation pursuant to
 30 Section 1785.16, an consumer may make a written
 31 demand on any person furnishing information to the
 32 consumer credit reporting agency to correct any
 33 information which the consumer believes to be
 34 inaccurate. The person upon whom the written demand
 35 is made shall acknowledge the demand within 30 days.
 36 The consumer may require the consumer credit
 37 reporting agency to indicate on any subsequent reports
 38 issued during the dispute that the item or items of
 39 information are in dispute. If upon investigation the
 40 information is found to be inaccurate or incorrect, the

1 consumer may require the consumer credit reporting
2 agency to delete or correct the item or items of
3 information within a reasonable time. If within 90 days
4 the consumer credit reporting agency does not receive
5 any information from the person requested to furnish the
6 same or any communication relative to this information
7 from this person, the consumer credit reporting agency
8 shall delete the information from the report.

9 SEC. 4. Section 1785.31 of the Civil Code is amended
10 to read:

11 1785.31. (a) Any consumer who suffers damages as a
12 result of a violation of this title by any person may bring
13 an action in a court of appropriate jurisdiction against that
14 person to recover the following:

15 (1) In the case of a negligent violation, actual damages,
16 including court costs, loss of wages, attorney's fees and,
17 when applicable, pain and suffering.

18 (2) In the case of a willful violation:

19 (A) Actual damages as set forth in paragraph (1)
20 above:

21 (B) Punitive damages of not less than one hundred
22 dollars (\$100) nor more than five thousand dollars
23 (\$5,000) for each violation as the court deems proper;

24 (C) Any other relief which the court deems proper.

25 (3) In the case of liability of a natural person for
26 obtaining a consumer credit report under false pretenses
27 or knowingly without a permissible purpose, an award of
28 actual damages pursuant to paragraph (1) or
29 subparagraph (A) of paragraph (2) shall be in an amount
30 of not less than two thousand five hundred dollars
31 (\$2,500).

32 (b) Injunctive relief shall be available to any consumer
33 aggrieved by a violation or a threatened violation of this
34 title whether or not the consumer seeks any other
35 remedy under this section.

36 (c) Notwithstanding any other provision of this
37 section, any person who willfully violates any
38 requirement imposed under this title may be liable for
39 punitive damages in the case of a class action, in an
40 amount that the court may allow. In determining the

1 amount of award in any class action, the court shall
2 consider among relevant factors the amount of any actual
3 damages awarded, the frequency of the violations, the
4 resources of the violator and the number of persons
5 adversely affected.

6 (d) The prevailing parties in any action commenced
7 under this section shall be entitled to recover court costs
8 and reasonable attorney's fees, unless the plaintiff only
9 seeks and obtains injunctive relief to compel compliance
10 with this title. If the plaintiff only seeks and obtains
11 injunctive relief to compel compliance with this title,
12 court costs and attorney's fees shall be awarded pursuant
13 to Section 1021.5 of the Code of Civil Procedure.

14 SEC. 5. Section 1785.33 of the Civil Code is amended
15 to read:

16 1785.33. An action to enforce any liability created
17 under this chapter may be brought in any appropriate
18 court of competent jurisdiction within two years from the
19 date the plaintiff knew of, or should have known of, the
20 violation of this title, but not more than seven years from
21 the earliest date on which liability could have arisen,
22 except that where a defendant has materially and
23 willfully misrepresented any information required under
24 this chapter to be disclosed to a consumer and the
25 information so misrepresented is material to the
26 establishment of the defendant's liability to the consumer
27 under this chapter, the action may be brought at any time
28 within two years after the discovery by the consumer of
29 the misrepresentation.

30 SEC. 6. Section 530.5 is added to the Penal Code, to
31 read:

32 530.5. Every person who willfully obtains personal
33 identifying information, as defined in subdivision (b), of
34 another person without the authorization of that person,
35 and uses that information to obtain, or attempt to obtain,
36 credit, goods, or services in the name of the other person
37 without the consent of that person is guilty of a public
38 offense, and upon conviction therefor, shall be punished
39 by imprisonment in a county jail not to exceed one year,

1 or by a fine not to exceed one thousand dollars (\$1,000),
2 or both.

3 (b) “Personal identifying information,” as used in this
4 section, means the name, address, telephone number,
5 driver’s license number, social security number, place of
6 employment, employee identification number, mother’s
7 maiden name, demand deposit account number, savings
8 account number, or credit card number of an individual
9 person.

10 SEC. 7. The provisions of this act shall become
11 operative July 1, 1998, *except for Section 6, which shall*
12 *become operative on January 1, 1998.*

13 SEC. 8. *The provisions, sections, subdivisions,*
14 *paragraphs, sentences, words, and clauses of this act are*
15 *severable. If any provision, section, subdivision,*
16 *paragraph, sentence, word, or clause, or any application*
17 *thereof, of this act is held invalid, that invalidity shall not*
18 *affect the other provisions, sections, subdivisions,*
19 *paragraphs, sentences, words, or clauses.*

20 SEC. 9. No reimbursement is required by this act
21 pursuant to Section 6 of Article XIII B of the California
22 Constitution because the only costs that may be incurred
23 by a local agency or school district will be incurred
24 because this act creates a new crime or infraction,
25 eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition
28 of a crime within the meaning of Section 6 of Article
29 XIII B of the California Constitution.

30 Notwithstanding Section 17580 of the Government
31 Code, unless otherwise specified, the provisions of this act
32 shall become operative on the same date that the act
33 takes effect pursuant to the California Constitution.

